

## H-3106-1 - TRANSFERS BY ASSIGNMENT, SUBLEASE, OR OTHERWISE

IV. Transfers of Overriding Royalty Interests, Payments  
Out of Production, or Similar InterestsKeywordsA. General

A royalty interest is the interest retained by the lessor in the substances leased and produced, free of the costs of production. This interest must be paid by the lessee or its agent to the lessor out of the production. Most Federal oil and gas noncompetitive leases reserve a 12 1/2 percent royalty to the United States, as lessor. When oil or gas is produced from such a lease, the lessee or its agent pays the United States either 12 1/2 percent of the production or the value of that 12 1/2 percent. Thus, any development of a lease requires consideration that a royalty interest, such as one-eighth of the production, must be turned over to the United States, as lessor, without regard to the costs of obtaining that production.

ROYALTY  
INTEREST

An overriding royalty interest (also called an override or ORI) is similar to the royalty interest in the sense that it represents a share of the production over the lessor's royalty interest. An overriding royalty interest is a fractional interest carved out of the lessee's share of interest in the oil and gas produced, free of any expense for exploration, drilling, development, operating, marketing, and other costs incident to the production and sale of oil and gas produced from the lease. A party holding a lease interest is entitled to some portion of the royalty interest from production that may create an overriding royalty by reserving a set portion of that production, usually expressed as a percentage of the total production, to the party when transferring or assigning all or a portion of the lease interest. A second method of creating an ORI is by transfer from a party holding the right to production from the leasehold to any other party.

OVERRIDING  
ROYALTY  
INTEREST

Although an overriding royalty is normally free and clear of any costs of production, some overrides may be subject to certain taxes before calculation, such as mineral severance taxes levied by the individual States. Once created by reservation or transfer, an ORI continues indefinitely unless it is somehow merged into a working interest. This can occur when the ORI is transferred to a party holding the right to production such as the holder of record title or of operating rights. The merger of an ORI into other interests normally is not of concern to the adjudication of transfers by the BLM.

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Keywords

An ORI is considered to be an interest in a Federal oil and gas lease, in accordance with 43 CFR 3000.0-5(1), and once created by reservation or transfer, is subject to further transfer. The Federal oil and gas leasing regulations require all transfers of overriding royalty interests to be filed with the BLM. In early days of Federal leasing, such transfers were subject to close scrutiny and approval. In final rulemaking effective August 22, 1983, the requirement of the BLM approval of ORI's was removed. When an ORI is filed, it now is simply placed in the appropriate lease case file with no further action by the BLM.

OVERRIDING  
ROYALTY  
TRANSFERS  
MUST BE FILED  
WITH BLM

The leasing regulations effective August 22, 1983, also clarify that each ORI for each lease requires submission of a nonrefundable \$25 filing fee, i.e., several overrides for multiple leases to the same party require the submission of multiple filing fees. The ORI's are not accountable or chargeable against acreage holdings.

OVERRIDING  
ROYALTY  
INTEREST IS  
NOT CHARGEABLE  
AGAINST ACREAGE  
HOLDINGS

Transfers of payments out of production are similar to and are to be processed as if they were transfers of ORI's. Production payments consist of a set dollar figure to be paid out of a specific portion of the production. Like overrides, these payments may be transferred or reserved. Such payments may be subject to costs more than regular overrides.

PAYMENTS OUT  
OF PRODUCTION

Transfers consisting of payments out of production or production proceeds frequently are made to financial institutions as part of a security or mortgage arrangement. These types of transfers are to be treated as overriding royalty transfers. Transfers, in such cases, frequently involve more than a single Federal lease, and the filing fee requirements are to be paid on a lease-by-lease basis. Because such documents may contain several hundred pages, it is more practical for the BLM State Office to accept only one complete copy for filing and cross-reference all the other affected lease case files. A filing fee of \$25 for each lease affected is to be collected as a condition for filing a transfer of production proceeds or payment out of production, similar to that required for an ORI.

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Keywords

A mortgage agreement is an instrument used by the owner of a lease to pledge his/her interest in a lease or leases as collateral in order to secure a loan from a person or lending institution. However, a mortgage agreement does not in itself transfer title. Therefore, the mortgagee is to be advised that the BLM does not accept mortgage documents for filing in the lease case files and that rights of the mortgagee as stated in the agreement will not be protected by the BLM (see Illustration 25).

MORTGAGE  
AGREEMENT

If a mortgage agreement states that it is assigning record title interest or transferring operating rights, the agreement document is to be returned to the sender with a statement that the proper BLM-approved forms must be filed with the nonrefundable filing fee of \$25 for each lease involved before the conveyance of the appropriate interest can be approved and recognized by the BLM.

A mortgage agreement conveying overriding royalty interest and/or payments out of production may be accepted, if the appropriate filing fee has been submitted, since there is no requirement that such transfers be filed on a particular BLM-approved form.

A stipulation of interest, i.e., an instrument indicating certification of legal title and authorization for payment on royalty interests in accordance with the terms of an oil or gas purchase contract, should be handled in a manner similar to a mortgage agreement, as stated above.

STIPULATION  
OF INTEREST

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B. Processing

## Responsible

Official	Step	Action	Keywords
Receiving Official	1.	Receive copy of the ORI. Note that the BLM-approved Forms 3000-3 or 3000-3a are not required to be used if the ORI is created or reserved independently of a record title or operating rights transfer (see 43 CFR 3106.4-2(b)). Date/time stamp all copies received. (See Illustration 26 for an example ORI.)	OVERRIDING ROYALTY INTEREST RECEIVED
		<u>NOTE:</u> Use of the BLM-approved forms that provide space for execution of such transfers should be encouraged.	
Cashier	2.	Validate nonrefundable \$25 filing fee for each ORI transfer. When several transfers affecting a single lease are filed at the same time in single or multiple copies, each separate transfer requires a \$25 filing fee.	VALIDATE FILING FEE
	3.	If insufficient or no filing fee is received to cover the transfers filed, mark a large "X" over the date/time stamp markings on the documents.	INSUFFICIENT OR NO FILING FEE
	4.	Return ORI transfer and/or insufficient fees to remitter (see Illustration 27).	
	5.	If sufficient filing fees are received, prepare an accounting advice for each ORI transfer (see Illustration 28). Indicate the transferee followed by "et al." as the applicant if there are multiple transferees. If the filing fee was not tendered by the applicant, complete the name of the party submitting the fee as the remitter. Otherwise, place the word "SAME" in the remitter blank. The filing fee, once determined to be adequate, is to be earned immediately, with no effort made to adjudicate the transfer. Attach the goldenrod copy of the accounting advice to the cover letter and corresponding transfer.	ACCOUNTING ADVICE - OVERRIDING ROYALTY TRANSFER

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Responsible Official	Step	Action	Keywords
Docket	6	If the ORI transfer does not apply to an active lease under the jurisdiction of the State Office, return it to the first-named transferee under a preprinted cover letter.	NO ACTIVE LEASE ON FILE
	7.	Review any correspondence and comply with any request to return a copy of the transfer. Use the regular mail to return any copies of the ORI. If only one copy of the ORI is received, any request to return a copy of the ORI transfer is to be denied. If further inquiry is received, respond that the BLM must retain one copy of the filed ORI, but will return duplicates, if such were filed. Respond to queries for copies of ORI transfers that have already been filed by advising the party that a copy may be obtained for the fixed cost of reproducing any document from lease case file.	SPECIAL REQUESTS
	8.	File transfer and correspondence with the accounting advice in the lease case file.	
ALMRS Entry	9.	Update case to show that the transfer of overriding royalty was filed: Enter Action Date (MANDATORY ACTION CODE): Date ORI filed; DE 1775 Action Code 560/DE 2910 Action Code 899; Action Remarks: Percentage of ORI; name of transferor/transferee (optional).	AUTOMATED NOTATION
	10.	Forward case file to Docket for filing.	

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